IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

CRL.A.No. 1920 of 2004(A)

SC.89/2003 of ADDL.SESSIONS COURT, KOTTAYAM
CP.56/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, KANJIRAPPALLY

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APPELLANT: COMPLAINANT:

STATE OF KERALA REP. BY STATE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI K.C.SANTHOSH KUMAR

RESPONDENTS: ACCUSED:

1. SIBI THOMAS, S/O. THOMAS,
CHERUMALA HOUSE, KOOVAPPALLY BHAGOM,
KOOVAPPALLY.

2. MANOJ, S/O. THOMAS, CHERUMALA HOUSE,
KOOVAPPALLY BHAGOM, MOOVAPPALLY.

3. JOSE, S/O. THOMAS, CHERUMALA HOUSE,
KOOVAPPALLY BHAGOM, KOOVAPPALLY.

4. ANTONY, S/O. THOMAS, CHERUMALA HOUSE,
KOOVAPPALLY BHAGOM, KOOAPPALLY.

BY ADV. SRI.SURESH BABU THOMAS
SRI.P.RAVINDRA BABU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & K.HEMA, JJ.

Crl.A.NO.1920 OF 2004

Dated this the 3rd day of July, 2007

JUDGMENT

Hema,J.

This appeal is filed by the State. The challenge is against the order of acquittal. The respondents 1 to 4 were charge-sheeted for offences under Sections 302, 341, 324 read with Section 34 of the Indian Penal Code ('the IPC' for short). They were tried by the Additional Sessions Judge and acquitted and hence this appeal.

2. According to prosecution, PW-9 and the accused (respondents 1 to 4) were on inimical terms with each other, in connection with the timber business. Motivated by the said enmity, accused 1 to 4, in furtherence of a common intention, assaulted PW-9 and his father (the deceased-Joseph) and committed various offences. The incident occurred on 25/5/2002 in the night. There were two incidents at two places, in the course of the same

transaction. The 1st incident occurred at about 9 p.m. near the house of Kochu Kunhu, by the side of the mud road. It occurred while PW-9 was returning to his house along the road, after his work. The 1st accused stopped PW-9 and wrongfully restrained him and beat with an iron-rod on his left shoulder, left thigh and head. PW-9 ran away, escaping from the clutches of the accused.

3. PW-9 reached the 2nd place of occurrence, i.e., near the house of John. At about 9.40 p.m., he was wrongfully restrained by the accused and on hearing the commotion, the deceased-Joseph rushed to the spot from his house, which was somewhere in the vicinity and attempted to intervene and prevent PW-9 from being attacked. At that time, the 3rd accused, with intention to kill the deceased-Joseph, and knowing that by his act, death will be caused, climbed onto the compound wall, took a granite stone and threw it on the head of the deceased-Joseph. The deceased Joseph sustained injury on the head and he fell down. People from the neighbourhood including PW-

11, the sister of PW-9 rushed to the spot. PW-9 and deceased-Joseph were removed to the Hospital at Kanjirappally, from where, the deceased-Joseph was referred to the Medical College Hospital. After the treatment, both the injured were again sent back to the Kanjirappally Hospital from Medical College Hospital and treated there.

4. While PW-9 was under treatment in the hospital, on intimation from the hospital, First Information Statement was recorded from PW-1 and it is marked as Ext.P10. Based on the said statement, FIR was registered as Crime No.137/2002 at Kanjirappally Police Station and it is marked as Ext.P16. Investigation was conducted. Deceased-Joseph died at the hospital on 6/6/2002, as a result of the injury sustained by him. Report was given for altering the section and thereafter, a charge -sheet was filed against accused 1 to 4 for the offence under Sections 341, 324, 302 read with Section 34 of the I.P.C.

5. Prosecution examined PWs.1 to 20 and marked Exts.P1 to P27, and M.O.1 and M.O.2 on its

side. The accused did not adduce any oral evidence; but marked Ext.D1 to Ext.D6 series on their side. The accused denied the entire allegations made against them. First accused filed a statement in writing raising certain counter allegations. According to him, PW-9 and CWs.2 and 3, who are close relatives, pelted stones at the house of 4th accused's brother, Mathai. When they were questioned about this, the 1st accused was beaten up. The 2nd and 4th accused, who rushed to the spot, were also assaulted by them with stone. Deceased-Joseph was also present there at that time. When stones were pelted to the house of Mathai, Manesh and Mathai also pelted stones back to the assailants. The accused pleaded innocence of the allegations made against them.

6. On an analysis of the evidence in detail, the court below found that the prosecution has not established its case beyond reasonable doubt and hence the accused were acquitted of all the offences charge-sheeted against them. The said order of acquittal is challenged by the State on

the various grounds which can be discussed as hereunder:

The learned Public Prosecutor vehemently contended that there are two eye witnesses to the incident, out of whom PW-9 being the injured, his presence at the scene of occurrence cannot be doubted. It was also submitted that the evidence of the eye witnesses, whose version is supported by a portion of the evidence of hostile witness, is available in this case and hence any defect in the investigation of a counter case or in registration of FIR, non-examination of independent witness, absence of proof of motive, the discrepancies or omissions in the FIR, the improvement, if any, made in the evidence of eye witnesses, etc., cannot be made a ground to discard the evidence of eye witnesses.

7. This is particularly so, since the presence of the accused at the scene of occurrence was admitted by the accused, during cross-examination as well as in the statement given at the time of questioning under Section 313

Cr.P.C.,it is argued. It was vehemently contended that the evidence of the eye witnesses PW-9 and PW-11 ought not to have been discarded, in the light of the cogent evidence tendered by them, which has not been shaken in cross-examination. It was strongly argued that none of the reasons given by the court below for rejecting the evidence of PW-9 and PW-11 is not at all sustainable, legally. According to the learned Public Prosecutor, the evidence of PW-9 and PW-11 was rejected on unacceptable grounds.

8. PW-9 has given evidence in the chief examination, more or less consistent with the prosecution case. He explained the manner in which, the incident happened at two different places. He also stated that his father deceased-Joseph, his sister, his relatives and neighbouring witnesses had rushed to the scene and they had witnessed the incident. He narrated each of the overtacts committed by each of the accused in this case, as against PW-9 and also against the deceased-Joseph. He had also referred to the

weapons used against PW-9 and the deceased-Joseph. According to PW-9, an iron-rod was used by the lst accused to beat him and inflict injuries on him and a stone was used on the deceased-Joseph by the 3rd accused. The stone was recovered from the scene itself and it was marked as M.O.1. Medical evidence was also adduced in support of the prosecution case, which reveals that the injuries sustained by the deceased-Joseph and PW-9 could be caused, as alleged by the injured. Referring to these facts, it was strongly contended that the evidence of PW-9 ought not to have been discarded, since it is corroborated by other evidence and circumstances.

9. On going through the impugned judgment, we find that the evidence of PW-9 is discussed in detail therein by the court below. The learned Sessions Judge referred to all the contentions raised by both sides and arrived at a conclusion that to prove the prosecution case, there is only an interested testimony of PW-9 and his evidence cannot be believed due to various discrepancies,

which are discussed in detail in the judgment. According to the learned Sessions Judge, PW-9 could not have seen the incident, taking into account the position in which he was placed, at the time when the deceased-Joseph was attacked. the court below arrived at a conclusion that it would not be possible for PW-9 to state how his father had sustained injuries. Learned Sessions Judge noted that PW-9's face was completely pressed against the compound wall at a time when the deceased was being attacked and only after the accused had run away from the place that he could see the things, as seen from the version made by PW-9 in court.

10. Learned Public Prosecutor vehemently contended that the finding is not based on evidence; but pure surmises. A perusal of the evidence of PW-9 shows that witness has given evidence that he was pressed against a wall and he was being beaten from behind and hence he was not able to state in what manner he himself was beaten. It is clear from his evidence that he

could not see what was happening behind him. In the light of the above nature of evidence given by PW-9, the conclusion arrived at by the learned Sessions Judge cannot be said to be based on surmises or imaginations, as argued by the learned Public Prosecutor. On an analysis of the evidence of PW-9, it may appear that the chance of PW-9 in witnessing putting of a stone on the head of the deceased-Joseph is not quite probable, though he asserted at various places that he had seen the 3rd accused putting the stone on the head of the deceased-Joseph.

11. In the light of the version given by PW-9, two views are possible, i.e., either he could not have seen what was going on at the back side or, may be, he had strained himself to see what was happening behind, while he was being attacked. But, PW-9 did not state specifically that he had taken effort to see what was happening to his father, though his own evidence will reveal that he could not see who was attacking the witness himself from behind. This fact was not clarified

in re-examination also. At any rate, even if two views are possible and two inferences may be drawn, the view which is favourable to the accused has to be accepted, is the settled position. In such circumstances,the finding entered into by the court below cannot be said to be totally unsustainable, as argued.

12. The question is whether PW-9 can be believed or not. It is clear from the evidence of PW-9 that the witness and the accused are on inimical terms with each other, even prior to the incident. This fact to be borne in mind before the evidence of PW-9 is analysed. According to PW-9, the accused was motivated to attack PW-9, since there was some difference of opinion in connection with timber business and they were on inimical terms and the accused had also assaulted PW-9 earlier. PW-9 deposed about the details of the motive in the chief examination itself.

13. On going through the evidence given by PW-9 in the chief examination, it is possible to infer that PW-9 and his relatives were more

motivated against the accused rather than the accused themselves being motivated against PW-9 and deceased Joseph to commit an offence of this nature. In the light of the defence version that an attack was actually made by PW-9 and his close relatives against the accused at the house of Mathai, it is essential that the alleged motive is examined in more detail. PW-9 deposed that prior to the incident on 9/3/2002, there was a dispute between the accused and his brother in connection with timber business. There was also an attempt to settle the matter, while PW-9 and his brothers were assaulted. Following this, PW-9 sustained injuries and he was treated in the hospital for 11 days. Though a statement was taken by the police from PW-9, no case was registered, PW-9 stated.

14. It is also deposed by PW-9 that in connection with the same incident, his father had also given a complaint, but the police did not take any action in connection with the same. According to PW-9, it is in view of the above enmity that the accused committed offence, as

alleged. On a close examination of the motive spoken to by PW-9, it would appear that PW-9 and his family members were aggrieved by the inaction on the part of the police in not proceeding against the accused, even though PW-9 and his brother were assaulted by them.

15. PW-9 and his father were injured at the hands of the rival group and they were hospitalised for a considerably long period and hence, in all possibilities, PW-9 and his relatives would have nurtured an enmity towards the accused's brother, rather than the accused being motivated to attack PW-9 and others. There is every possibility for PW-9 and his relatives to retaliate. PW-9 does not have a case that he of his family members had done anything against the accused so that a counter attack on PW-9 and others was possible.

16. In this background, the counter allegation made in this case has to be appreciated. According to the accused, PW9 and his brothers who are cited as CWs.2 and 3 pelted

stones at the house of one Mathai, who is the brother of 4th accused in this case. Mathai and his son Manesh and others pelted stones back to the assailants, who are PW-9 and Cws.2 and 3. In the incident accused 1 and 3 were allegedly injured. According to the accused, a complaint was also lodged before the police, as early as on 29/5/2002 which was even prior to the lodging of the FIR in this case. A4 had given a complaint alleging assault made by PW-9 and his brothers against the accused.

17. First Information Statement given by A4 is marked as Ext.P22. Based on Ext.P22, FIR was also registered as crime No.136/2002 and it is marked as Ext.P23. It is also in evidence that the accused 2 and 4 were hospitalised in the same hospital where PW-9 and deceased were admitted and that too, prior to latter's hospitalisation. The wound certificates relating to accused 2 and 4 were also marked as Ext.P18 and P19. It is seen from these documents that both the accused had sustained lacerated injuries. It is also seen

from the wound certificates and the evidence of the doctor that an allegation was made to the doctor as early as on 25/5/2002 at 11.30 p.m., at the time of admission in the hospital that PW9 and his brothers CW-2 and CW-3 and deceased Joseph had assaulted him in the same night.

18. As per the allegations in the First Information Statement lodged by the 4th accused, Ext.P22, the incident happened on the road situated in front of the house of the 4th accused. Thus as per the counter allegations there was an incident in which PW-9, CW-2 and CW-3, A1 and A4, Mathai and Manesh were also involved. On going through the records in this case, it is clear that at the 2nd place of incident is more or less in front of the house of A4.

19. In this background, an attempt must be made to find out as to how exactly the incident happened, as per the available evidence on record. On a reading of the evidence of PW-9, it is clear that he is guilty of various suppressions. Whenever questions were put to him

indicating that there was an attack on the accused and that they were also injured, hospitalised, etc., he was either evading the answers or attempting to suppress material facts which could be known to him. The documents produced in this case already establish that A2 and A4 had sustained lacerated injuries in the course of the same incident. In fact, the Investigating Officer candidly admitted that they had sustained injuries.

20. If as a matter of fact, A2 and A4 had sustained lacerated injuries of considerable nature in and around the same incident, it is only natural and probable that PW9 would be in a position to explain how those injuries were caused to A2 and A4. But, when PW-9 was cross-examined regarding these aspects, he stated that he was not even aware of any counter allegation being made against him. It has come out from the evidence of PW9 that he knew that A2 and A4 were hospitalised in the same hospital. But his case is that he did not know how they were injured. If the persons,

who allegedly attacked PW9 and his father, were in the same hospital and if PW-9 comes to know of it, in all probabilities PW9 would have been anxious to know why they were hospitalised or at least he would try to ascertain whether there was any false counter allegation being made etc.

21. But PW9 deposed that he did not know that there was any case taken up against himself and his relatives for allegedly causing injuries on A2 and A4 at the same place, time and date. It is difficult to accept the version of PW-9 that he was totally unaware as to how injuries were sustained by A2 and A4 or at least what exactly was the allegation made by them against PW-9 etc. It is evident that PW9 was trying to suppress the most material aspect in this case. Anyway, it is evident from the evidence on record that on the same day, time and place (2nd place) A2 and A4 were injured. But neither PW-9 nor other eye witness, PW-11, could explain as to how the accused were injured.

22. The attitude of the Investigating Officer

in this regard also cannot be understood. It is relevant to note that no investigation was conducted to find out how A2 and A4 sustained injuries in the same incident for which they were hospitalised. It is the duty of the investigating officer to make an investigation into the allegations made by the accused as well and find out how they sustained injuries etc. The prosecution has to place the entire facts before the court so that a right decision could be taken by the court in the matter. Though, as per the First Information Statement given by the 4th accused, he himself and the 1st and the 2nd accused were assaulted by PW9, CW-2 and CW-3, the Investigating Officer admitted before court that as per the refer report filed in the counter case (Crime No.137/02), none of the assailants (PW9 and CW-2 and CW-3) were questioned by him. Any Investigator would necessarily question the alleged assailants to find out whether the allegation made against them are true. No attempt was made to proceed against PW-9 and others who

are the alleged assailants in the counter case and there is no explanation why PW9, CW-2 and CW-3 were not even questioned by the Investigating Officer.

23. PW9 stated in the cross examination that he was not asked by the police whether he himself and his brothers had inflicted any injury on the accused. In this connection, it is also relevant to note that CW-2 and CW-3, who were also allegedly assaulted by A1, A2 and A4, were not examined in court. Since the evidence and various documents reveal that they were also present at the time of occurrence at the second place of incident, their evidence would have been vital to aid the court to arrive at the truth. But they were held back, without any explanation.

24. It is also to be noted that even without examining PW9, CW-2 and CW-3, who allegedly inflicted injuries on A2 and A4, Investigating Officer, who filed the refer report in the counter case has surprisingly come forward with an explanation as to how the injuries were sustained

by A2 and A4. According to PW18, he had submitted the refer report in the counter case and he had verified the investigation. The refer report is marked as Ext.P24. He deposed in cross examination that he came to know that the 2nd accused sustained injuries while CW-2 pushed him down and he fell on a stone.

25. It is also stated by PW-18 that A4 sustained injuries, while he was pushed down by PW9, while the latter was being assaulted. PW-18 further deposed that the refer report does not show that the relevant accused were questioned in the counter case. It is not understood as to how the investigating officer has come to the conclusion, the manner in which A2 and A4 sustained injuries, even without questioning PW9, CW-2 and CW-3, who alone could have explained how these injuries were sustained.

26. It is also to be noted that even the accused in this case were not admittedly questioned in connection with the counter case. It is, therefore, reasonable to infer that no proper

investigation was conducted into the counter case, but the case was referred, without any basis, stating that it is false. There was evidently a partisan attitude in this case in investigating into the case and also a failure in placing all relevant materials before court. Consequent this, the court is not in a position to reach a conclusion as to how the incident could have happened and how A2 and A4 sustained injuries in the course of the same incident.

27. The evidence of PW-9 and PW-11 is not at all helpful to find out as to how the accused sustained injuries. While analysing the evidence of eyewitness, the absence of explanation of injuries on the accused which could be caused in the course of the same incident will certainly tell upon the veracity of the version. Their evidence discloses that they are suppressing various facts to their convenience and such evidence cannot be accepted for face value.

28. In this connection another fact is also relevant. Though, as per the allegations in the

First Information Statement given by the 4th accused, the incident happened on the road situated in front of his own house and it has come out from the evidence of PW9 that the 2nd incident happened in front of the house of the 4th accused, the prosecution produced scene mahazar and a plan in the counter case, describing the place of incident as one situated near Kunhu's house. The accused had no case that any incident had happened near Kunhu's house; but according to them, the incident occurred only in front of the house of the 4th accused.

29. If that be the case, the scene can only in front of A4's house and not near the house of Kunhu, and it is in evidence that those places are distantly placed. It is not understood under what circumstances the police described the scene of occurrence in the counter case as a place situated near Kunhu's house which is totally different from the place alleged by the 4th accused. The said discrepancy is also not explained in evidence and there is evidently certain manipulations.

30. In this connection a perusal of Ext.P8 will be relevant. Ext.P8 is the site plan, which was prepared by the Village Officer on the basis of a scene mahazar in the counter case. The plan which is prepared on 28/5/2002, must have been prepared much prior to the registration of the crime in this case. The offence involved at that time, necessarily will not include any offence under Section 302 I.P.C. But Ext.P8 refers to offence under Section 302 I.P.C. It is not clear how such a reference could be made in Ext.P8. This discrepancy is not explained.

31. From all the above facts, an inference possible may be, that even in describing the scene of occurrence Investigating Officer played a game and made attempts to shift the scene to a different place than the 2nd place of incident. PW-9 and A4 have made it clear that the incident happened in front of the house of 4th accused, an attempt is seen made to shift the place of occurrence to another place, near Kunhu's house, as described in Ext.P6 and Ext.P8. It is a totally

different place. The said place admittedly lies about 170 mts. away from the second place of occurrence. All these facts tell upon the fairness in investigation and also cast a serious doubt on the entire prosecution case.

32. In this connection, the delay in registration of the FIR assumes great significance. The incident happened on 25/5/2002 between 9 and 9.40 p.m. as per the court-charge and the prosecution case. But the FIR in this case was registered only on 29/5/2002, after expiry of 4 days of the incident. It has come out in evidence that First Information Statement in the counter case was given much earlier and it was recorded from the 4th accused from the Taluk Headquarters Hospital. As per the evidence, PW9 and the deceased Joseph were also present in the same hospital at that time. There is every possibility of recording a statement from PW-9 or the deceased-Joseph also at that time.

33. But, there is no explanation why the police recorded only the statement of 4th

accused on that day and why no statement was recorded either from PW9 or the deceased-Joseph. Though the alleged assailants in the counter case, who are PW9, CW-2 and CW-3 and the deceased-Joseph, were available in the same hospital, police did not only not recorded any statement from them but did they also make any steps to arrest the alleged assailants, who now figure as prosecution witnesses. This is a serious discrepancy which ought to have been explained by the prosecution, but there is no explanation.

34. It is also to be noted that PW-9 himself deposed that the deceased-Joseph was in a position to talk while he was in the Taluk Headquarters Hospital. Still, the Investigating Officer has not taken any steps to record his statement. In this background, the long delay in registration of the crime raises a doubt on the origin of the FIR and it is only reasonable to think whether a new shape has been given to the entire case, by fabricating an FIR at a belated stage. There is every chance for the interested persons to

deliberately delay the registration of the FIR to introduce embellishments and fabricate a statement to suit their convenience by making deliberate suppressions, additions, deletions etc.

35. In this context, it is relevant to once again refer the scene of occurrence. Though according to the 4th accused, the incident happened in front of his house, a scene mahazar has been prepared to make it appear that the incident in which the 4th accused and other co-accused were injured, happened near the house of Kunhu. While the police did not have any occasion to ascertain from the accused in this case, (admittedly, they having been not questioned by Investigating Officer, the injured PW-9 and CW-2 and CW-3 also not being questioned in connection with the counter case), it is a mystery as to how the police Officers prepared a scene mahazar in the counter case describing the place of occurrence as near Kunhu's house, which was actually introduced subsequently in this case, as one of the place of occurrence.

36. When the accused have no case that any incident happened near Kunhu's house, it is the duty of the prosecution to explain how and under what circumstances site plan and scene mahazar in the counter case were prepared showing the place which is alleged as the first place of occurrence in this case. There was absolutely no occasion for anybody to state such place as the place of occurrence in the counter case and this would all strongly indicate manipulations.

37. In this connection, the evidence of PW9 is also looked into. PW9 deposed in chief examination that he sustained injuries at the first place of occurrence near Kunhu's house and he did not sustain any injuries at the second place of occurrence, that is, in front of the 4th accused's house. But, in the cross examination he deposed that he was beaten up with an iron rod at the second place of occurrence. He thereby, gave a go by to his original version that he was beated up with an iron rod near the house of Kunhu.

38. It is clear from totality of evidence and circumstances that some attempt has been made to make it appear that a part of the incident happened near Kunhu's house which is far away from the 2nd place of occurrence. The reference made in Ext.P8, the site plan in the counter case as Section 302 IPC itself is an indication that it was prepared much after alteration of the offence to one under Section 302 IPC, and the place of occurrence is shown therein as near Kunhu's house at a subsequent stage. Ext.P6 and Ext.P8 must have come into existence at a belated stage, after 6/6/2002, the date of which the deceased-Joseph expired.

39. In the above circumstances, the delay in FIR ought to have been explained by the prosecution, giving cogent reasons. But absolutely no reason is given by PW-9 as to why he lodged the complaint at the belated stage. It has come out in evidence that his brothers-CW-2 and CW-3 were present at the time of occurrence in front of the house of the 4th accused and that they were not

hospitalised also. It is not understood why at least they had not given a complaint to the police regarding the assault allegedly made against PW-9 and the deceased-Joseph, though they were quite free to do so. In all probabilities, the delay has been caused deliberately. Taking all the above facts into consideration, we find that the lower court did not commit any error in not placing explicit reliance on the evidence of PW-9.

40. The evidence of PW-11 can be looked into next. She stated that she is an eye witness to the occurrence. According to the prosecution, she heard a hue and cry from the road and rushed to the scene of occurrence along with her father and other relatives. She deposed that she had seen the incident and the manner in which her brother, PW-9 was wrongfully restrained and the deceased-Joseph was assaulted by the 3rd accused by putting a stone on his head. The court below entered a finding that her presence at the place of occurrence is doubtful, since her name is not seen in the FIR.

41. Even though the FIR is lodged after four days of the incident and there was sufficient time for PW-9 and others to ponder over to give a First Information Statement containing all material particulars, there is omission to mention name of PW-11 in the F.I. statement. There is no explanation why there was such a significant omission relating to the presence of PW-1 at the scene in the First Information Statement. The statement was not given at a time when an omission could take place due to bad state of mind. It was given after four days of incident and much before death of deceased-Joseph, too. If as a matter of fact, PW-11 had witnessed the occurrence, there is no reason why PW-9 did not state the same in Ext.P10. The court below has rightly used this omission as a circumstance to doubt PW-11's presence at the scene.

42. A reading of the evidence of PW-11 also raises doubts whether she was present at the scene at the time of occurrence. She deposed that she was questioned by the police after the death of

her father. It can be seen from her deposition that whatever she had stated to the police under section 161 of the Code regarding the circumstances under which she reached the scene, were contradicted by her. She deposed that she did not tell the police that she was also present along with the persons who had rushed to the scene. She gave evidence that her father, mother, sister and her brother-in-law had rushed to the scene, but she did not tell the police that she was also present along with them. In the light of the above admissions made by her, her presence in the scene was rightly found to be doubtful by the court below.

43. The evidence of PW11 suffers from the same defects as is noted in the evidence of PW9. Though she claims to be an eye-witness to the occurrence, she was not able to give any explanation as to how the accused in this case were injured. She also pleaded ignorance when questions were put to her regarding a counter case. PW11 was not able to give an acceptable

version relating to scene of occurrence. In fact, a reading of the evidence of PW11 raises a doubt whether she was actually present at the scene, when the incident occurred.

44. According to PW11, PW9 was held by the accused against the compound wall which lies on the side of the Private way leading to "Anchanattu family". She admitted that this took place on the northern compound wall of the way leading to "Anchanattu" and it was where PW9 was held by the accused. The said place is away from the place of occurrence which is noted by the investigating officer in the scene mahazar as well as in the complaint. But, PW-11 later stated that PW-9 was held against the compound wall situated on the side of Panchayat road.

45. When the above contradiction was brought out to her notice in the re-examination, she stated that the Panchayat road and private road are different. She deposed that the statement given by her that PW9 was held against a compound wall, which was lying close to the

Panchayat road was correct and she gave up the statement given by her in the cross-examination regarding the most vital aspect about place of occurrence. In the light of these discrepancies, it is not proper to place any reliance in the evidence of PW-11.

46. Taking all the above facts and circumstances into consideration, we find that the court below has rightly rejected the evidence of PW.9 and PW-11. The prosecution has not established the guilt of the accused by adducing cogent evidence. The order of acquittal passed in favour of the accused cannot, therefore, be interfered with. It can only be confirmed.

Criminal Appeal is dismissed.

P.R.RAMAN,
Judge.

K.HEMA,
Judge.

kcv.